

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Amanda K. Relva (Respondent) was employed by Respondent Correctional Training Facility, California Department of Corrections and Rehabilitation (CDCR) as an Associate Governmental Program Analyst (AGPA). By virtue of her employment, Respondent was a state industrial member of CalPERS. On or about October 29, 2014, Respondent submitted an application for disability retirement on the basis of a cardiovascular (heart) condition. Respondent's application was approved by CalPERS and she retired effective December 31, 2014.

In 2017, CalPERS' staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that she would be reevaluated for purposes of determining whether she remains substantially incapacitated and is entitled to continue to receive a disability retirement.

In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of her former position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for an Independent Medical Examination (IME) to James M. Schmitz, M.D., a board-certified Cardiologist in 2018. Dr. Schmitz interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Schmitz also performed a comprehensive IME.

Initially, Dr. Schmitz concluded Respondent was still qualified for disability retirement. He explained she had returned to work in 2012 and in spite of significant accommodations, she was not able to do her job as there were various activities she could not perform. Upon CalPERS' request, Dr. Schmitz undertook a further review of the objective evidence and opined that Respondent was not incapacitated from performance of her job duties as an AGPA as a consequence of any cardiovascular condition including postural orthostatic tachycardia syndrome (POTS). Dr. Schmitz concluded this because her recent and normal cardiovascular studies demonstrated improvement in her POTS condition. As a result of his review of Respondent's Holter Monitor from November 2016 and stress test from August 2017, Dr. Schmitz concluded that there was no recent objective evidence of POTS and that Respondent appeared to have a normal exercise tolerance.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated, was no longer eligible for

disability retirement, and should therefore be reinstated to her former position as an AGPA.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on September 10, 2019. Respondent represented herself at hearing. CDCR did not appear at the hearing.

At the hearing, the ALJ received documentary evidence demonstrating that CalPERS had provided both Respondent and CDCR with proper notice of the date, time and place of the hearing. The ALJ found that the matter could proceed as a default against CDCR, pursuant to Government Code section 11520.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

Copies of written job descriptions for the position of AGPA for CDCR were received into evidence and considered by the ALJ.

At the hearing, Dr. Schmitz testified in a manner consistent with his examination of Respondent and both reports prepared after the IME. Dr. Schmitz testified that the testing and medical reports he reviewed showed that Respondent's symptoms improved and caused him to change his opinion regarding Respondent's POTS condition. He further testified that the recent tilt table test showed improvement and that Respondent's medications were not adjusted which showed improvement. Dr. Schmitz's medical opinion is that Respondent should be able to perform the duties of her position as an AGPA and is therefore no longer substantially incapacitated.

Respondent testified on her own behalf. Respondent testified to the history of her POTS condition, her current symptoms and limitations, her current medical treatment, and her desire to return to work. At the hearing, Respondent also testified that she disagreed with the results of Dr. Schmitz's examination and report.

Respondent called Raymond Lares, her live-in boyfriend, to testify on her behalf. Mr. Lares testified to Respondent's symptoms and limitations and to the letter he prepared. She also submitted the letter prepared by Mr. Lares into evidence, which was admitted.

Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physicians and a letter from the Social Security Administration to support her appeal, which were all admitted as administrative hearsay.

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ granted Respondent's appeal. The ALJ found that CalPERS did not meet its burden of proof of establishing that Respondent is no longer substantially incapacitated based on competent medical evidence by a preponderance of the evidence. The ALJ found Dr. Schmitz's changed opinion that Respondent is not substantially incapacitated to be not compelling or persuasive.

The ALJ concluded that Respondent's disability retirement shall continue.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." In order to avoid ambiguity, staff recommends replacing "CO" with "AGPA" on page 21, paragraph 6, line 5 of the Proposed Decision. Staff also recommends removing "industrial" before "disability retirement" on page 3, paragraph 1, line 6; page 3, paragraph 2, line 5; page 16, paragraph 25, line 3; and page 20, paragraph 2, line 2 of the Proposed Decision.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board, as modified.

November 20, 2019

HELEN L. LOUIE
Attorney